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1. If a defendant relies upon a plea in abatement, he must plead it before putting in the plea of not guilty. If he wishes to test the validity of such a plea, after having plead not guilty, he must ask leave of the court to withdraw the plea of not guilty, and file his plea in abatement.—Sunday vs. State 417
2. The plea in abatement was for misnomer. The indictment was against "Michael Sunday," and the name set out in the plea "Michael Sontay." Wilkerson vs. the State, 13 Mo. R. 91.—Ib.

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1. John Keenan obtained judgment before a justice of the peace against Smith, who appealed to the circuit court. The appeal bond was executed to Joseph Keenan. On motion to dismiss, the court gave time to perfect the bond. The new bond was also payable to Joseph Keenan, and the security in it was proved to be insolvent. The bonds were clearly insufficient, and the appeal properly dismissed. Smith should have satisfied himself of all the requisites of the bond, and it was his own fault, if he was surprised by the proof of insolvence. As to the time of putting in the motion to dismiss, in the absence of a rule of court, requiring it to be done, before the case is called, the presumption is in favor of the correctness of the decision of the court below.—Smith vs. Keenan 529

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1. The city officers of the city of St. Louis arrested the defendant as a vagrant under the city ordinances, and discharged him again upon his promise that he would leave the city within a specified time. After the time had elapsed, the deceased again, without a warrant, arrested defendant under an order from the head of the police, and was killed by defendant in resisting the arrest.

Held,

1. That if the arrest by the deceased was made solely because defendant had broken his promise to leave the city, it was illegal; but if made because defendant was at the time a vagrant within the meaning of the city ordinances, then it was legal.
2. Whether the arrest was made by deceased under circumstances which would constitute it legal or illegal, is a question of fact which should be submitted to the jury, under proper instruction from the court.
3. If the arrest was illegal, and the deceased was killed by defendant in resisting it, in the absence of proof of express malice, the killing would only amount to manslaughter.
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"The act of 1849, which proposes to establish a system of taxation upon merchants and grocers, 'in lieu' of other enactments then existing, is not, of itself, such a departure from the basis of taxation ordained by the constitution, as to require the interposition of the judiciary; but the proviso to that enactment is in the nature of a saving repugnant to the constitution of this State. Taxes may be collected from merchants and

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2. It is for parties to make their own contracts, and courts of justice cannot relieve against injudicious ones, unless upon the ground of fraud, mistake, or some other ground known to the administration of justice—Ib.

3. In a contract for the delivery of barley, the quality called for, may be ascertained by mercantile usage of the terms employed; and the parties are presumed to use them according to the meaning attached to them by the mercantile community—Whitmore & Pegram vs Coats 9

4. If a bargain be such as no man in his senses, and not under delusion would make on the one hand, and as no honest and fair man would accept on the other, it will be relieved against; but if the parties be competent to contract, and neither takes any undue advantage of the other, it will not be disturbed—Tison vs. Labeaume 198

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6. Upon the trial of an indictment against a free woman for leasing a house to be kept as a bawdy house, a slave who co-habits with her as man and wife is a competent witness for her.—Coleman vs. The State 150
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16. If an original deed, duly recorded in the proper office, within one year from its date, and more than twenty years from the time a copy is offered in evidence or though not so recorded, is yet accompanied by proof of such facts and circumstances, as together with the certificate of acknowledgment as proof, will satisfy the court that the person who executed the instrument is the person therein named as grantor, has been lost or destroyed, or is not in the power of the party who wishes to use it, a certified copy of the record thereof, and of the certificate of acknowledgment or proof, is admissible in evidence. Rev. Stat. 1843, 469-70.—Bosworth vs. Bryan 575

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FRAUD.

1. Whether an entry from the United States was procured by fraudulent means or not, in a contest between two claimants from the United States, is a question of fact to be submitted to a jury.—Waller & Smith vs. Von Phul 84
2. Where a person in failing circumstances sells his property to one creditor, intending thereby to hinder and delay his other creditors in collection of their debts, yet the sale cannot be avoided unless the vendee had knowledge of, and was privy to the fraudulent intent.—Little vs. Eddy & Beach 160
3. If a bargain be such as no man in his senses, and not under delusion, would make on the one hand, and as no honest and fair man would accept on the other, it will be relieved against; but if the parties be competent to contract, and neither takes any undue advantage of the other, it will not be disturbed.—Tison vs. Labeaume 198
4. Joseph M. Ferguson was indebted to his brother, Thomas J. Ferguson, in the sum of three hundred dollars, for which he executed his note. Afterwards Joseph sold and deeded to Thomas a tract of land for one thousand dollars. The note not being present when the deed was executed, Joseph executed another note to Thomas for two hundred and sixty dollars, money advanced on the land, and Thomas executed to Joseph a note for four hundred and forty dollars, and died, in a short time afterwards, leaving the matter in this condition. Joseph, in such case, had no interest in the land subject to the payment of his debts.—Edwards vs. Ferguson et. al 469

FREEDOM.

1. A female slave was sold to serve ten years and no longer; and then to go free and be manumitted forever. Within the ten years, she had a child. The child, in such case, is not entitled to freedom. A person born of a slave is a slave.—Lee vs. Spague 476

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GARNISHMENT.

1. The law applicable to the Home Mutual Insurance Company, does not permit an execution to issue against them, until three months after judgment. If, within this period, execution be issued, it will not defeat a garnishment upon them, and the recognition and paymant of the execution subsequent to the garnishment, will make no difference. Home Mut. Ins. Co. vs. Gamble 407
2. A judgment by default against a garnishee, summoned in attachment as a debtor of the defendant, does not admit the plaintiff's right to prove a joint indebtedness of the garnishee to the defendant and another; and, in such case, the assignment of the other of his interest in the indebtedness to the defendant, will make no difference. An assignment of accounts does not carry with it the legal interest.—Kingsly vs. Missouri Fire Company 465
3. A transcript of a judgment against a defendant, as garnishee, must show the defendant's answer to the interrogatories; otherwise it can afford no evidence whether the defendant's indebtedness to the assignor of the plaintiff, was on account of the note sued on or not.—Dirlam vs. Wenger 548

GRAND JURY.

1 The provision of the 19th sec. of the 3d article of the act concerning "practice and proceedings in criminal cases," requiring the foreman of a grand jury to certify under his hand the indictment is a true bill, is merely directory. After a defendant has been convicted upon an indictment not thus certified, it is too late upon a motion in arrest to raise this objection.—State vs. Mertens 94

GROCERS.

1. "The act of 1849, which purports to establish a system of taxation upon merchants and grocers, 'in lieu' of other enactments then exisiting, is not itself such a departure from the basis of taxation ordained by the constitution, as to require the interposition of the judiciary; but the proviso to that enactment is in the nature of a saving repugnant to the constitution of this State. Taxes may be collected from merchants and grocers under the authority of that act alone—using for that purpose the machinery merely which is provided and directed by the act of 1845."—Crow et. al. vs. The State 237

INDICTMENT.

1. An indictment which charged the defendant with stealing five red cows of the value of fifteen dollars each; five black cows of the value of fifteen dollars each; five white cows, &c., all the property of A, is good.—Wein vs. The State 125
2. In an indictment under the 1st sec. of the 3d article of the act concerning crimes and punishments, for setting fire to a dwelling house in which there was at the time a human being, it is not necessary to name the person in the house at the time the firing was done. A statement, in the words of the statute, that at the time the act was perpetrated there was a human being in the house is sufficient.—State vs. Aguila 130
3. A person who commits an offence against a statute while in force, under our law, may be indicted and punished for it after the act against which the offence was committed, has been repealed.—State vs. Matthews 133
4. Upon the trial of an indictment for selling liquor without license, if the defendant has a license, it devolves upon him to produce it.—Schmidt vs. The State 137
5. Where a person acts as the clerk or agent of another in selling spirituous liquors for him if his employer has no license authorizing him to sell, either may be indicted.—Ib.
6. An indictment which alleges that the delinquent sold liquors "to persons to the grand jurors unknown," is supported by the testimony of a person who swears that the defendant sold liquor to him; unless it further appears from the evidence that the grand jury knew the witness to have heen, in fact, the unknown person alluded to in the indictment. Hays vs. The St, 13 Mo. Rep., 246.—State vs. Bryant 340
7. A person indicted for selling liquor without license cannot excuse himself upon the ground that, at the time he did the act, he was in the employ of another person, and sold it as his agent.—Ib.
8. In an indictment for fraudulently mortgaging premises previously conveyed, without a recitation of the fact, the offence must be charged with sufficient certainty both as to time and place. If no venue be laid in the indictment, it will be defective.—State vs. Welker 398
9. An indictment for arson, charging that the defendant "did set (omitting the word "fire") to and the same house then and there, by the spreading of such fire, did feloniously, wilfully and maliciously burn and consume," is sufficient. The statute of arson declaring

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that "every person, who shall set fire to or burn," being in the disjunctive, the indictment would have been good, had it contained the second clause only, for burning the house, and the defective attempt to include the first clause, may be rejected as surplusage. Polsten vs. State 463

10. An indictment on the 16th sect., art. 3—crimes and punishments, must specify the manner in which the entry into the dwelling house was made, so that the court may see that such an entry, by day or by night, was made in such manner as to constitute no other burglary, created by statute. To constitute burglary under this section, a breaking in the night time to get out of the house, must also be shown.—Conner vs. State 561

INJUNCTION.

1. On a motion to dissolve an injunction, the plaintiff is entitled to a trial on the merits, and to have a jury to assess the damages.—Home Mutual Ins. Co. vs. Bauman 76

2. Patterson was security for one Nowell, in a note given to Brock, who recovered judgment against both, and had execution accordingly. The execution was levied upon Nowell's land, and stayed by Brock's order, and not renewed until after the statutory lien had expired, and that of another judgment attached. Nowell became insolvent, and a subsequent execution was run against Patterson. The execution, in such case, will not be enjoined. The petition nowhere alleged that Brock knew that Patterson was but a security. Brock had a right to treat the judgment as a joint one, or as joint and several, and to exercise his own discretion respecting its collection, at least, until the alleged security took proper steps to make known his true character.—Patterson vs. Brock 472

INSTRUCTIONS.

1. It is the duty of the circuit court, when asked, to instruct the jury that if upon the whole case they have a reasonable doubt of the guilt of the prisoner of the offence charged against him, they should acquit him, yet a refusal to give this instruction is not sufficient cause to reverse the judgment when the instructions given presented the whole case fairly before the jury.—Gardiner vs. The State 97

2. The circuit court should not give an instruction which contains merely an abstract legal proposition.—Wein vs. The State 125

3. Instructions which merely state abstract rules or principles of law, without any evidence to base them upon, are improper, and should not be given.—Heirs of Strictland vs. heirs of McCormick 166

4. When the law has been properly given to the jury, it is no error to refuse another instruction presenting the same legal proposition, in a different way.—Webb & Hepp vs. Browning & Bushnell 354

5. Objections to instructions cannot, for the first time, be taken on a motion for a new trial. The record must show that exception was taken to them, at the time they were given; otherwise they will not be remanded by the supreme court.—Powers vs. Allen 367

6. It is wrong to instruct a jury that "the want of motive or interest to swear false is a circumstance from which they are at liberty to infer that the testimony of the defendant was not wilfully and corruptly false." The secret motives which give birth to acts are not always susceptible of proof.—Schaller vs. State 502

7. Although an instruction may contain a correct abstract principle of law, yet if there be no evidence to warrant it, it is no error to refuse to give it.—Muldrane vs. Caldwell 523

8. An instruction directing the jury to find for the plaintiff, if he has proved the material facts set forth in either count of his declaration, though somewhat singular, is not sufficient to authorize the supreme court to set aside the verdict.—Clemens vs. Collins 604

INSURANCE.

1. In a policy containing the following proviso, viz: "Provided always, and it is hereby declared that this company shall not be liable to make good any loss by theft; or any loss damage by fire, which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power." The clause protecting the company against losses by theft, is independent of the one immediately following it.—Webb & Co. vs. Protection and Ætna Ins. Co 3

2. It is the duty of the court to give effect to both clauses, and every clause of the contract, if it can be done, although the result of such a construction may be to diminish the value of the security. It is for parties to make their own contracts, and courts of justice cannot relieve against injudicious ones, unless upon the grounds of fraud, or mistake, or some other ground known to the administration of justice.—Ib.

3. In a policy upon a steamboat, providing for notice to the insurers of a change of masters, or owners, it is necessary for their assigns to give like notice of every subsequent change. Tennessee Marine Ins. Co. vs. Scott and Mudge 46

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4. The expression in a policy, requiring notice of loss to be given forthwith, must be understood to mean with all due diligence under the circumstances of the case. The distinction taken in Kyles case (11 Mo. R. 289) between the notice of loss and other preliminary proofs, was not well considered.—Philips vs. Protection Ins. Co..... 220
5. In an action on a policy, making it incumbent on the plaintiff to produce his vouchers, and submit to an examination under oath, if required by the agent of the company; if on such requisition, the plaintiff fails to comply with the condition of the policy, without excuse or justification, he cannot recover; but his failure is, to some extent, a question of fact and intention. If it was to gain time, and lessen the chances of detecting fraud, it would be fatal; but if to save the plaintiff or his family from an epidemic, it would not.—Ib.
6. If the underwriters refuse to pay the plaintiff's claim, because he has failed to submit to an examination under oath, they cannot afterwards insist on his failure to comply with other requisitions of the policy.—Ib.
7. A clause in a policy requiring payment to be made in sixty days after loss, and filing proof at the office of the underwriters, applies to cases of an adjustment by the officer, and to no other. If the company refuse to adjust, an action will lie within the sixty days.—Ib.

INTEREST.

1. Interest is first to be calculated on a demand up to the first partial payment—then add the interest to the principal and deduct the payment therefrom, then cast interest on the remainder to the second payment, add the interest to the remainder, and deduct therefrom the second payment, and so on until the last partial payment, unless, in any case, the interest up to any payment shall exceed the payment, in which case, such payment is to be deducted from the interest, and the excess of the interest, is to be carried forward, without casting interest thereon, to the next payment, that will discharge the excess—Riney vs. Hill..... 500

LANDLORD AND TENANT.

1. Where a defendant comes into possession under contract for a deed, he is not strictly a tenant, and is not entitled to notice to quit. He is liable to be turned out as a trespasser, if he fails to comply with his contract, and is responsible in that character for mesne profits—Glascock vs. Robards..... 350
2. A tenancy at will cannot arise, without a grant or contract, denoting permission to occupy—Young vs. Ingle & Scriber..... 426
3. On the hearing of an injunction by a landlord against his tenant, for cutting and carrying away timber, it is necessary for the landlord to prove his title. A tenant cannot dispute his landlord's title—Parker vs. Raymond & Vose..... 535

LIMITATION.

1. The term "beyond sea" in the first section of the statute of limitation of 1825, means without the United States. Shrew vs. Whittlesey, adm'r of Whittlesey, 7 Mo. Rep 473, and Bedford vs. Bedford, Mo. 8 Mo. Rep. 233, overruled, and Marvin, adm'r of Bates vs. Bates, 13 Mo. Rep. 217, re-affirmed—Fackler vs. Fackler, adm'r of Fackler. 431
2. Though, under ordinary circumstances, no limitation can operate in favor of a trustee, yet where time and long acquiescence have obscured the nature and character of trust, or the acts of the parties, other circumstances give rise to presumptions unfavorable to its continuance; in all such cases, a court of equity will refuse relief, upon the ground of lapse of time, and its inability to do complete justice—Taylor et al. vs. Blair et al..... 437

MERCHANTS.

"The act of 1849, which purports to establish a system of taxation upon merchants and grocers, 'in lieu' of other enactments then existing, is not of itself such a departure from the basis of taxation ordained by the constitution, as to require the interposition of the judiciary; but the proviso to that enactment is in the nature of a saving repugnunt to the constitution of this State. Taxes may be collected from merchants and grocers under the authority of that act alone—using for that purpose the machinery merely, which is provided and directed by the act of 1845"—Crow et al vs. The State..... 237

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MERGER.

1. If the holder of a note takes another, and higher security for his debt, he must look to that security alone, and cannot afterwards, maintain an action on the note—Hall vs. Hopkins et al 450

MISNOMER.

1. The plea in abatement was for misnomer. The indictment was against "Michael Sunday," and the name set out in the plea "Michael Sontay." Wilkerson vs. The State, 13 Mo. R. 91—Sunday vs State 417

NEW MADRID CERTIFCATES.

1. The holders of a New Madrid certificate had a right to locate it only on "public lands which had been authorized to be sold." If it was located on lands which were reserved from sale at the time of issuing the patent, the patent is void—Wright vs Rutgers et al 585
2. There was no reservation from sale of the land claimed under a French or Spanish title between the 26th of May, 1829, and the 9th July, 1832. A location under a New Madrid certificate, upon any land claimed under a French or Spanish title, not otherwise reserved, made in this interval, would have been good—Ib.

NEW TRIAL.

1. A new trial will not be granted for newly discovered testimony, if it be to assail the credibility of a witness merely—Deer & Rose vs. The State 348
2. A second new trial will not be granted, unless the triers of the fact have erred in a matter of law, or have been guilty of misbehavior—Ramsey, adm'r of Cox vs. Hamilton. 358
3. The supreme court will not review as a ground of error, anything which was not brought before the court below, in a motion for a new trial. The circuit judge may not correct the errors into which he may have fallen when directly presented to him, but he must, at least, have an opportunity of doing so—Kanada vs. North 615

NOTICE.

1. A promise to pay a bill of exchange after its dishonor raise a legal presumption of notice to the drawer, and dispenses with the necessity of proof of notice of protest for non-payment—Dorsey vs. Watson 59
2. If a county court makes an order allotting a widow dower in the slaves of her deceased husband, without the notice required by statute to be given to the executor, administrator and persons interested, it is void. No presumption that such notice has been given will arise where the record is silent—Peake vs. Redd 79
3. A person taking possession of real estate, under a parol contract of purchase, and receiving notice to quit on the same day of, but before the service of a summons upon him, is not guilty of an unlawful detainer, in holding over—Young vs. Ingle & Scribner. 426
4. In presenting a judgment for allowance against an estate, the same notice is required, as in the presentation of other demands; and if it be not given, the allowing is unauthorized and illegal, and may at any time, be set aside, on the application of the administrator—Bryan vs. Munday, adm'r of Munday 458

OFFICERS' RETURN.

1. An officers' return, showing that he executed process against a steamboat, by seizing the hull and other parts of the boat, as then lying at the wharf, partly taken to pieces or being broken up, is sufficient—Gaty et al. vs. Garrison et al 33
2. There are only two modes of personal service pointed out by law; one is by reading the petition and writ; and the other is by delivering copies of them. The officer may pursue either mode, but the act does not seem to contemplate the propriety of separating the process, by reading one portion and delivering a copy of the other—Waddingham et al. vs. The city of St. Louis 190
3. The return of a constable on a warrant against a steamboat, showing that he executed it by going on board the boat, and by reading the same to the clerk, and by finding the sheriff in charge of her, is sufficient to give the justice issuing the warrant, jurisdiction to hear and determine the case against the boat—Steamboat Eureka vs. Noel & McSherry 513

PARTITION.

A purchaser of land at a sale conducted under an order made in a proceeding in a partition, cannot avoid the payment of the purchase money upon the ground of a failure

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of title. Such sales are made like those under ordinary executions, without warranty of title. The deed executed conveys the interest, whatever it may be, of the parties to the proceeding, is a bar against them, and all persons claiming under them. Owsley et al. vs. Smith's heirs 153

PARTNERSHIP.

1. When the death of a partner prevents the partnership operations from being carried on according to the agreement, and money advanced from being refunded, as stipulated for, the surviving partner may recover for the money advanced, in the same manner, as if no partnership had ever existed—Biernan's adm'r vs. Braches 24
2. If two be partners, and lumber be sold to either of them, for the benefit of the firm, they are both liable—Braches vs. Anderson 441
3. The fact that the lumber was not charged on the books of the plaintiff, against the defendant, is not material, if he was in fact a partner, and the lumber was furnished for partnership purposes—Ib.
4. The taking of a new note of a partner, for a partnership debt, after the dissolution of the partnership, with third persons as security, does not, *per se*, discharge a retired partner. Such a transaction cannot be regarded as anything more than a *prima facie* case against the creditor, liable to be rebutted by other proof—Yarnell & Co. vs. Anderson 619

PATENT.

1. If two patents be issued by the United States for the same land, and the first in date be obtained fraudulently or against law, it does not carry the legal title—Wright vs. Rutgers et al 595
2. A patent is a mere ministerial act, and if it be issued for lands reserved from sale by law, it is void—Ib.

PAYMENT.

1. Under the plea of payment, the burden of proof is on the defendant, who must prove the payment of money, or something *accepted* in its stead. The word is not a technical one, but when used in pleading in respect to cash, it means *immediate* satisfaction: but when applied to the delivery of a bill or note, or other collateral thing, it does not necessarily mean payment in immediate satisfaction and discharge of the debt, but may be taken in its popular sense, as delivery only, to be a discharge, when converted into money—Yarnell & Co. vs. Anderson 619

POSSESSION.

A purchaser of land cannot obtain such possession as will enable him to sustain trespass by an act of ownership, against the will of an adverse possessor—Sigerson vs. Hornsby et al 71

PRACTICE.

1. In general, when a witness has been examined in chief, cross-examined, re-examined by the party calling him, and finally dismissed, it lies very much in the sound discretion of the court trying the case, whether such witness can again be re-called. The circumstances peculiar to each case, must, to some extent, control this discretion—Atchison vs Steamboat Dr. Franklin 63
2. If the object in recalling a witness be to re-affirm his former statement *only*, it is unnecessary, and tends to endless repetition—Ib.
3. A final order of a county court cannot be set aside at a subsequent term, merely upon the ground of error—Peake vs. Redd 79
4. In making up a bill of exceptions, the court may recall, and interrogate a witness, as to what he swore on the trial; and, in such case, neither party has a right to examine him—Whitmore & Pegram vs. Coats 9
5. "It having been long held and settled;" that the payment of the purchase money, by a vendee, going into possession, under a contract for a deed, will not protect his possession in ejectment, "it is deemed but prudent and proper to permit the new code of practice and procedure upon which we are just entering, to suggest and establish a rule or rules, more consonant to equity, to justice and to law."—Glascock vs Robards 350
6. Whether persons jointly indicted shall have separate trials, is a matter of discretion with the court; and unless some reason, to the contrary appears, it will be presumed to have been soundly exercised—Fitzgerald et al. vs. The State 413
7. If a defendant relies upon a plea in abatement, he must plead it before putting in the plea of not guilty. If he wishes to test the validity of such a plea, after having

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pleaded not guilty, he must ask leave of the court to withdraw the plea of not guilty, and file his plea in abatement··Sunday vs. The State···· ···· ···· ···· ····· ····· 417
8. Our recent statute regulating practice in courts of justice, requires suits to be brought the names of the parties in interest; and it is for the court to say, upon a given state of facts, whether a plaintiff is the real party in interest··Williams & Yeatman vs. Whitlock····· ····· ···· ···· ····· ····· ···· ···· ···· ···· ···· ····· ····· 552
9. A deposited funds at a banking house, in the name of B, giving B the pass-book and blank checks, with permission to use them. B, when applied to by ostensible creditors of A, disclaimed all interest in the funds, and gave a check for them. Held, that B was not a party in interest, and could not maintain an action for the funds··Ib.
10. When a cause is submitted to the court without a jury, the safer couse is the court to declare (as a court) in the first place, what the law of the case is deemed to be, and secondly, (as a jury) to find the issue of fact accordingly··Piercifield, wife et al. vs. Snyder et al···· ···· ····· ···· ···· ···· ···· ···· ···· ···· ····· ····· ···· 583

PRACTICE AND PROCEEDINGS IN CRIMINAL CASES.

1. The provision of the 19th section of the 3rd article of the act concerning "practice and proceedings in criminal cases," requiring the foreman of a grand jury to certify under his hand the indictment is a true bill, is *merely directory*. After a defendant has been convicted, upon an indictment not thus certified, it is too late, upon a motion in arrest, to raise this objection··State vs. Mertens····· ····· ····· ····· 94
2. The 25th section, article 6, practice in criminal cases, requiring the discharge of persons indicted and committed to prison, if not brought to trial, before the end of the second term of the court having jurisdiction, held after indictment found, unless the delay happens on the application of the prisoners, or be occasioned by want of time to try the case at such second term, is applicable alone to pending indictments. In computing time under it, the period of confinement under previous indictments for the same offence which were dismissed by *nolle prosequi*, or suspended by the finding of a subsequent indictment, must not be included··Fanning vs. The State···· ····· 386

PRACTICE IN THE SUPREME COURT.

1. Unless unusual hardship or injustice appears in the refusal of a circuit judge to put the plaintiff to an election, as to which of several breaches is intended to be relied on, the exercise of such discretionary power will not be disturbed—Fulkerson's Adm'r vs The State to use of St. Charles county····· ····· ····· ····· ····· ···· ···· 49
2. Where it is clear from the whole record that a cause has been tried substantially upon its merits, and that the verdict being for the right party, is not *clearly* exorbitant, the supreme court will not disturb it—Milburn et al. vs. Beach & Eddy···· ····· ···· 104

PRINCIPAL AND AGENT.

1. A person indicted for selling liquor without license cannot excuse himself upon the ground that, at the time he did the act, he was in the employ of another person, and sold it as his agent—Bryant vs. The State····· ····· ····· ····· ····· ···· 340
2. A written agreement by the agent of a mercantile firm, within the scope of his general authority, employing attorneys to prosecute suits for his principals, is admissible evidence against them, to prove the value of the services, after the contract has been fully executed, although the agent had no authority in writing, to execute such written agreement for his principals—Webb & Hepp vs. Browning & Bushnell···· ···· 354
3. An agent must keep within the scope of his authority—Hall vs. Hopkins et al····· 450
4. The agent of a lumber company, having full authority to transact any business for them—to employ men, purchase logs, sell lumber, and to perform any other business connected with the company, has "a general authority in a particular business,' and may transfer lumber to the hands in payment of wages due them—Taylor vs. Labeaume····· ···· ···· ····· ···· ···· ···· ···· ····· ···· ···· ···· ···· ···· 572
5. The question of excess of the authority of an agent should be left to the jury, under such general instructions from the court, as will give them at least, a latitude of consideration sufficiently ample, to permit the proper weighing of all the facts in the case. and the finding of a verdict accordingly—Ib.
6. If an agent, by concealment, dissimulation or otherwise, abuses the trust confided in him, and seeks to make money for himself, out of the business of his principal, it is, in law, a fraud sufficient (as between the parties themselves) to vitiate any contract or arrangement growing out of it. The principal having deposited with the agent $850 00 to buy negroes, and the agent having purchased negroes for a less amount, and transferred them to the principal for the sum deposited, it was held to be a fraud upon the principal, and that he was entitled to recover the difference between the deposite, and the price originally paid by the agent for negroes—Kanada vs. North·· 615

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QUANTUM VALEBANT.

An attorney performing professional services for another, by his consent, without an express agreement as to the price of the services, is entitled to recover what they may be proved to have been reasonably worth—Webb & Hepp vs. Browning & Bushnell 354

RECOGNIZANCE.

1. A recognizance is similar to an obligation or bond, and subject to the same rules of construction—Cunningham vs. The State 402
2. If a recognizance or bond be subscribed, it is obligatory, though the signature be not inserted in the body of the instrument, Adams et al. vs. Wilson, 10 Mo. R., 341; overruled—Ib.
3. The act incorporating the city of St. Louis gives the Mayor authority to take recognizances of persons charged criminally before him; and there is no prohibition of such an exercise of legislative authority—Ib.

RIGHT OF WAY.

1. If the owner of land grants a right of way to another, and afterwards grants the land to a third person, he takes it subject to the right of way—Walker vs. Newhouse .. 373
2. If the plaintiffs in trespass, claims title directly as intermediately under a person, who has previously granted a right of way over the land to the defendant, it is a good defence for passing over the land, and in such cases it is immaterial whether the person under whom both claim, had title or not—Ib.

RIOT.

1. The common law concerning the offence of riot is not in force in this State—Smith et al. vs. The State 147
2. In order to constitute a riot under the 6th section of the 7th article of the act concerning crimes and punishments, it is necessary that the act done or attempted should be an "unlawful act," and done in a violent or turbulent manner—Ib.

ROADS AND HIGHWAYS.

1. A person may dedicate his land as a public highway without a deed, and a use of twenty years is not, in all cases, essential to establish such dedication; but this is in cases where it is obviously the intention of the proprietor to make such dedication—Stacey vs. Miller 478
2. The bare fact that a farmer leaves a lane through his farm, and permits the public to use it as a highway for fifteen years, does not authorize the inference of a dedication to the public—Ib
3. The repeal of section 13, article 1, roads and highways, by the act of 1847, did not, by implication or otherwise, repeal sections 16, 17. 18 and 19 of the act of 1845, though seemingly dependant upon the 13th section. The only effect was to leave to the discretion and practice of the county courts, the time of receiving and acting upon remonstrances: St. Francois county vs. Marks, post page, 539—St. Francois County vs. Peers 537
4. A county court, having received a remonstrance against the location of a county road, and appointed commissioners to assess damages, a majority of whom assessed damages in favor of the party remonstrating, cannot refuse to receive the report of the commissioners. The award must be complied with, or the case sent to a jury, as provided for in the first section of the amendatory act of January 25, 1847—Ib.

SHERIFF.

A sheriff is *ex-officio* collector until the 1st of January next; succeeding the expiration of his term of office as sheriff, and if such sheriff, on the expiration of his term as sheriff fail or refuse to qualify as collector, the vacancy in the office of collector can be filled by the Governor. See 10 Mo. Rep., 681—Fulkerson's Administrator vs. State to use of St. Charles county 49

SLAVES.

In order to make the hirer of a slave responsible for his running away, a *prima facie* case of negligence on the part of the hirer must be proven. See 10 Mo. Reports, 568—Beadslee et al. vs. Perry et al 88

SPANISH CLAIMS.

1. A title derived from a location of land covered by the Spanish claim, confirmed by act

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of congress, made by the State of Missouri, by virtue of the act of March 6, 1820, is superior to a title derived from a confirmation under the act of congress of July 1, 1836—Delaurier vs. Emmerson 37

2. The second section of the latter act, protects all actual locations, and sales *bona fide* made under color of the law of the United States. (Sarpy vs. Papin, 7 Mo. Rep., 503, and Allison vs. Hunter, 9 ib., 762.)—Ib

3. A decision of the board of commissioners, confirmed by the act of Congress of July 4th 1836, in favor of the legal representatives of the original claimant, is a confirmation to an assignee, filing the claim before the recorder of land titles, for confirmation—Boone et al. vs. Moore 420

STATUTES.

1. The act to quiet vexatious land litigation of February 2, 1847, operates prospectively only—Paddleford vs. Dunn 517

STATUTE OF FRAUDS.

1. Gibson and Bailey were trustees of a shcool district. The Board agreed to lend Bailey two hundred dollars out of the first school money subsequently received. Money belonging to the school fund was handed to one or both of the trustees (which, it did not appear.) The money was used by Gibson, and no part of it by Bailey. Both, however, acknowledged their liability for it. The acknowledgement of Gibson, in such case not having been in writing, he was not liable—Bailey & Gibson vs. Trustees of Mineral School District 498

STREETS AND ALLEYS.

1. To grade a street or alley, already dedicated to public use, is not an exercise of the eminent domain, so as to require compensation, if it be done skilfully and discretly —Taylor vs. The city of St. Louis 20

2. If a proprietor of lands, when laying them off as a part of a city, declare a part of them a public alley, no ordinance regularly declaring it such is necessary—Ib.

TRUSTEES.

1. It is the duty of trustees to keep within the letter of the authority conferred upon them—Gray & Howard vs. Shaw 341

2. A sale by trustees under an advertisement dated December 7, and stating that the trustees would "on the 28th day of December next" proceed to sell, is valid. The ordinary construction, based upon the usage applicable to such advertisements, and the duty of the trustees to advertise *twenty days* before the sale, cannot mislead bidders, or result in injury—Ib.

3. If the power of trustees be to sell the whole, or so much of the trust property, as may be necessary to satisfy the debt secured, they may properly divide it into convenient building lots, and if the proceeds of the sales equal the aggregate value of the property, no exception can be taken—Ib.

4. If land be purchased by one, with the funds of another, and for his benefit, the purchaser is a trustee, and if he conveys the land to an innocent purchaser, he will be compelled to account for the value of the land; with interest thereon from the sale to the decree—Paul et al. vs. Chouteau et al 580

VARIANCE.

1. A variance between a declaration and bond may be remdied by amendment, and if the bill of exception shows, it was permitted and made, it does not matter that the declaration itself, as it purports to be copied in the record, appears *not* to have been altered—Fulkerson's Administrator vs. State to use of St. Charles county 49

VERDICT.

1. Though the verdict of a jury may not be entirely satisfactory to the supreme court, it will not, for such a cause, be set aside—Lee & Dolen vs. Ashbrook 378

2. If the testimony be such as, well enough to authorize the verdict, the supreme court will not disturb it—Munday vs. Bryan, use of Deloge 456

3. It is not with us, as at common law. A finding by a jury with us of a general verdict, and assessing general damages will answer, if there be one good count in the declaration—Clemens vs. Collins 604

WILLS.

1. A bequest to the testator's wife, "for her support, and the education of his daughter,

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of all the monies which might be due him, after his debts were paid, and all the rents and proceeds of his property of every description for and during his life," conveys an estate to the wife, for life only—Swearingen et al. vs. Taylor et al..... 391

2. From 1807 to 1845, the law of this State permitted a will, executed in any other State or territory, according to the forms prescribed by the laws of such State or territory, to pass lands in this State. In 1845, this law was changed, and lands lying in this State could not be devised, except the will was executed with the formalities required by our law, and protected by our courts. It was not the design of the legislature to make the act of 1845 retrospective in its operation—Schulenberger & Bockler vs. Campbell..... 491

3. An unattested will may be set up and republished by a codicil, not physically annexed to the will, but which is attested by a sufficient number of witnesses required by law to prove a will. The codicil is a part of the will, brings it down to the date of the codicil, making the will speak of that date, unless a contrary intention appears—Harvey & Wife vs. Chouteau..... 587

4. A copy of a codicil executed in Louisiana, and which by the laws of that State is required to be kept in the office of a notary public, a copy only being attainable, is admissible evidence before the probate court--Ib.

5. The 5th section of the statute concerning wills, declaring that "every person who shall sign the testator's name to any will by his direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request," is mandatory; and not merely directory; and, if such statement be not made, the will is void. There is no such thing known as a "voidable will." The wife having signed the testator's name, without subscribing her own name as a witness to the will, as stating that she signed the testator's name at his request, the defect was held to be fatal, and the will void—McGee et al. vs. Porter..... 611

WITNESS.

1. In making up a bill of exceptions, the court may recall and interrogate a witness as to what he swore on the trial, and, in such case, neither party has a right to examine him—Whitmore & Pegram vs. Coats..... 9

2. A grantor in a deed of trust, under which a party interpleading claims property attached, is not a competent witness for the defendant to shew the consideration of the deed—Keiser vs. Moore..... 29

3. In general, when a witness has been examined in chief, cross examined, re-examined by the party calling him, and finally dismissed, it lies very much in the sound discretion of the court trying the case, whether such witness can again be recalled. The circumstances peculiar to each case, must, to some extent, control this discretion—Atchison vs. Steamboat Dr. Franklin..... 63

4. If the object in recalling a witness be to re-affirm his former statement *only*, it is unnecessary, and tends to endless repetition--Ib.

5. Upon the trial of an indictment for keeping a bawdy house, the refusal of witnesses who have frequented the house to answer questions in reference to the conduct of the inmates and visitors while there, upon the ground that they would degrade themselves, may be taken into consideration by the jury in making their verdict--Clementine vs. The State..... 112

6. Where the transaction to which a witness is interrogated forms any part of the issue to be tried the witness will be obliged to give evidence, however strongly it may reflect on his character--Ib.

7. Before the credit of a witness can be impeached by proof of anything he has said in relation to the cause, a foundation must first be laid for such proof by first asking him whether he has said that which is intended to be proved--Ib.

8. Upon the trial of an indictment against a free woman for leasing a house to be kept as a bawdy-house, a slave who co-habits with her as man and wife is a competent witness for her—Coleman vs. The State..... 157

9. If a person, who is a material witness for the defendant, is jointly indicted with him, and there is no evidence, or but slight evidence, against him, the proper practice is to apply to the court to permit the issue as to the intended witness, to go immediately to the jury, and, if found not guilty, he may then be sworn as a witness. 8 Mo. R., 26--Fitzgerald et al. vs. The State..... 413

WRITS AND PROCESS.

1. There are only two modes of personal service pointed out by law—one is by reading the petition and writ, and the other is by delivering copies of them. The officer may pursue either mode, but the act does not seem to contemplate the propriety of separating the process, by reading one portion and delivering a copy of the other—Waddingham et al. vs. The City of St Louis..... 190

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